

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

MARY LOU VEGA,

Defendant and Respondent.

E049571

(Super.Ct.No. RIF126798)

OPINION

APPEAL from the Superior Court of Riverside County. Gordon R. Burkhardt, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Reversed.

Rod Pacheco, District Attorney, and Kelli Catlett, Deputy District Attorney, for Plaintiff and Appellant.

Sachi T. Wilson, under appointment by the Court of Appeal, for Defendant and Respondent.

I

INTRODUCTION

On October 31, 2005, a felony complaint was filed against defendant and respondent Mary Lou Vega. The complaint alleged five counts, including unlawful possession of methamphetamine, unlawful possession of marijuana, unlawful possession of a loaded firearm while in possession of methamphetamine, sale of methamphetamine, and felonious child endangerment.

On April 6, 2009, the trial court read and considered what the court deemed to be defendant's Penal Code¹ section 1381.5 demand. Following the hearing, on August 25, 2009, defendant was present in court and waived time for her arraignment which was rescheduled for August 27, 2009. After two additional continuances, on September 3, 2009, defendant made an oral motion to dismiss under section 1381.5. The trial court granted defendant's motion.

On September 17, 2009, the People filed a motion to reconsider the dismissal of defendant's case under Code of Civil Procedure section 1008. The trial court denied the People's motion on September 29, 2009.

On appeal, the People contend, and defendant concedes, that the trial court erred in dismissing defendant's case under section 1381.5. We agree with the parties and reverse the trial court's order dismissing defendant's case.

¹ All statutory references are to the Penal Code unless otherwise specified.

II

ANALYSIS

The People contend that the trial court erred in dismissing defendant's case because the court applied the wrong legal standard. Defendant concedes.

In this case, the trial court dismissed the charges against defendant after a finding that the People failed to initiate proceedings against defendant within 90 days of her section 1381.5 demand. Section 1381.5, however, did not apply because defendant was an out-of-state prisoner held in federal custody.

Under section 1381.5, “[w]henver a defendant has been convicted of a crime and has entered upon a term of imprisonment therefor in a federal correctional institution *located in this state*, and at the time of entry upon such term of imprisonment or at any time during such term of imprisonment there is pending in any court of this state any criminal indictment, information, complaint, or any criminal proceeding wherein the defendant remains to be sentenced If an assent from authorized federal authorities for release of the defendant for trial or sentencing is received by the district attorney he shall bring him to trial or sentencing *within 90 days* after receipt of such assent [¶] If a defendant is not brought to trial or for sentencing as provided by this section, the court in which the action is pending shall, on motion or suggestion of the district attorney, or representative of the United States, or the defendant or his counsel, dismiss the action.” (§ 1381.5, italics added.)

Here, the United States Department of Justice served an “Offer To Delivery Temporary Custody” letter, dated July 14, 2009, on the Riverside County District Attorney. In the letter, the warden of the federal detention center in Seatac, Washington, Robert Palmquist, informed the Riverside County District Attorney’s Office that defendant was available for transport to face the charges pending against her in Riverside. Therefore, because defendant was not held in a federal institution in California, section 1381.5 did not apply to defendant’s case.

The applicable statute, section 1389, the Interstate Agreement on Detainers, provides that the prisoner be brought to trial in California within 180 days, not 90 days. (See § 1389.)

In this case, the initial demand was improperly served on the People by the court on April 6, 2009. Thereafter, under section 1389, the People had 180 days, until October 3, 2009 to initiate prosecution, one month *after* the trial court dismissed this case. The section demand, which was properly served on the People was dated July 14, 2009 and received on July 20, 2009, was also under the 180-day action requirement at the September 3, 2009 dismissal hearing.

Therefore, because the trial court’s order dismissing this case relied on a statute that did not apply to defendant’s situation, section 1381.5, we hereby reverse and remand this case to the trial court for further proceedings.

III

DISPOSITION

The case is reversed and the matter is remanded for further proceedings.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.
/s/ Miller
J.